



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ECOSYSTEMS,
TRIBAL AND PUBLIC
AFFAIRS

JUL 14 2014

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Mr. Sergey Litovchenko
5905 Barr Road
Ferndale, Washington 98248

RE: Request for Information Pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318

Dear Mr. Litovchenko:

This letter concerns an alleged violation of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, for the unauthorized discharge of fill material in wetlands and waters of the United States on your property located near 484 West Pole Road between Lynden and Ferndale, Washington (Site). By this letter, we are providing you the opportunity to provide information to the United States Environmental Protection Agency (EPA) to refute these allegations.

In March 2014, the EPA received information from Whatcom County that it conducted an on-site inspection of the above referenced property on February 11, 2014, and subsequently issued a stop work order. This letter requests information about activities that occurred at the Site.

The Clean Water Act (CWA) prohibits the discharge of dredged or fill material into waters of the United States, including wetlands, except as authorized by a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344. CWA § 308, 33 U.S.C. § 1318, authorizes the EPA to request information when determining whether a person is in violation of the CWA. Pursuant to the authority of CWA § 308, you are requested to respond to the enclosed Information Request.

Section 309 of the CWA, 33 U.S.C. § 1319, authorizes the EPA to assess a class I administrative civil penalty of up to \$16,000 per violation, up to a maximum amount of \$37,500, and class II penalty of up to \$16,000 per day of violation, not to exceed \$187,500. You are hereby advised that you must cease and desist from all unpermitted work in any waters of the United States, including wetlands, side channels, and ditches connected to side channels, and that failure to comply may subject you to civil and/or criminal sanctions.

Please read the instructions and definitions in the enclosure carefully before preparing your response. Answer each question as clearly and completely as possible. Your response to this request must be accompanied by a certificate that is signed and dated by you or the person who is authorized by you to respond to the request. The certification must state that the response is complete and contains all information and documentation available to you that is responsive to the request. A Statement of Certification is included with this letter.

Please submit your answers within thirty (30) calendar days of receipt of this letter to:

U.S. Environmental Protection Agency, Region 10
Attn: Krista Rave-Perkins
Mail Code ETPA - 202 - 2
1200 Sixth Ave, Suite 900
Seattle, Washington 98101-3140

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In accordance with 40 CFR § 2.203(a), you are hereby notified that you may assert a business confidentiality claim covering part or all of the information requested above in the manner described by 40 CFR § 2.203(b). Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR Part 2, Subpart B, and the EPA regulations addressing this subject. If no confidentiality claims accompany the information when it is received by EPA, the information may, without further notice to you, be made available to the public.

The Small Business Regulatory Enforcement and Fairness Act, Section 222, provides small businesses with the opportunity to submit comments on regulatory enforcement at the time of an Agency enforcement activity. The Small Business Ombudsman may be reached at 1-800-368-5888.

Failure to provide all the information requested in this letter or to explain adequately the basis for such failure, or the making of any false material statement or representation in response to this Information Request, may constitute a violation of Section 308 of the Act, and may result in an enforcement action and the imposition of civil and/or criminal penalties or fines pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and 18 U.S.C. § 1001.

If you have questions concerning this request, please contact Krista Rave-Perkins at (206) 553-6686 or rave-perkins.krista@epa.gov. If you have any legal questions concerning this matter, please have your attorney contact Endre Szalay, Assistant Regional Counsel at (206) 553-1073 or szalay.endre@epa.gov.

Sincerely,



Michael J. Szerlog, Manager
Aquatic Resources Unit

Enclosures

cc: Joe Brock, Senior Scientist
U.S. Army Corps of Engineers, Seattle District

ENCLOSURE 1

INFORMATION REQUEST

This information is requested pursuant to Section 308(a) of the Clean Water Act, 33 U.S.C. § 1318(a).

1. Your response must include copies of all documents that you rely upon or use to answer any of the questions in the request. All documents must contain a notation indicating the question to which they respond.
2. If any question cannot be answered in full, answer to the extent possible. If your responses are qualified in any manner, please explain.
3. You must supplement your response to EPA if additional information or documents become known or available to you after you have submitted your response. Should you find, at any time after the submission of your response, that any portion of the submitted information is false, inaccurate, or misrepresents the truth, you must notify EPA of this fact as soon as possible and provide a corrected response.

Definitions

The following definitions shall apply to this request:

1. The term "you" shall mean the addressee of this request, the addressee's company or other business entity, its officers, directors, managers, employees, contractors, trustees, partners, successors, assigns, and agents.
2. The term "person" shall have the same definition as in Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5): an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.
3. The term "identify" means, with respect to a natural person, the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position, or business.
4. The term "identify" means, with respect to a corporation, partnership, or other association or business entity (including a sole proprietorship), its full name, address, legal form (*e.g.*, corporation, partnership, etc.), and a brief description of its business.
5. The term "identify" means, with respect to a document, to provide its customary business description, date, number, if any (*e.g.*, invoice or purchase order number), and the substance or subject matter.
6. The term "the Site" means the property on which the alleged violations occurred, and all adjacent property to which you have claim of title or operation. In this case "the Site" refers to the property located near 484 West Pole Road between Lynden and Ferndale, Washington.
7. The terms "document" and "documents" shall mean any object that records, stores, or presents information, and includes writings of any kind, formal or informal, whether or not wholly or partially in handwriting, including, but not limited to, any invoice, bill of lading, receipt,

correspondence, memorandum, calendar, notebook, check, canceled check, bank statement, report, message, audio or video tape, photograph, graph, chart, photocopy, map or plan; and, (a) all copies of such document(s) which are different than the original, (b) drafts, (c) attachments to or enclosures with any document, and (d) every document referred to in any other document.

8. The term "waters of the United States" shall have the same definition as in 33 CFR Part 328.
9. The term "wetlands" shall have the same definition as in 33 CFR § 328.3(b).
10. The terms "dredged material," "discharge of dredged material," "fill material" and "discharge of fill material" shall have the same definitions as in 33 CFR § 323.2.
11. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this request any information which might otherwise be construed to be outside its scope.
12. Words in the masculine shall also be construed in the feminine, and vice versa, and words in the singular shall also be construed in the plural, and vice versa, where appropriate in the context of a particular question or questions.
13. All terms not defined in this request shall have their ordinary meaning, unless such terms are defined in the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, or in the regulations found at 33 CFR Parts 323 and 328, in which case the statutory or regulatory definitions shall apply.

Questions

1. Identify the date and means by which the properties constituting the Site were conveyed to you and provide proof of ownership (*e.g.*, deed) of each property. If ownership has changed since the first placement of dredged or fill material on the Site, describe the chain of ownership and provide a description of all parcels of land transferred.
2. Identify and describe all work activity conducted at the Site, including but not limited to: excavation of soils, gravel or other materials; stockpiling of soils, gravel, concrete or other materials; placement of soil, gravel, concrete or other material; construction associated with stabilization of ditch side slope; spreading, grading and compacting of soil, gravel, concrete or other materials; and clearing and removal of trees and vegetation. This also includes any work activity that affects the catchment or conveyance of water at the Site (*e.g.*, grading, ditching, ditch work, piping or alterations to existing piping of surface and/or groundwater, catchment systems, installation of or alterations to drains including storm drains, culverts, etc).

For each discrete activity or portion of the work, include in your description the following information:

- a. Location of the work (by parcel number or legal description);
- b. The purpose for the work activity;
- c. Approximate commencement and completion dates for each work activity;
- d. The approximate linear feet or acreage of land disturbed;
- e. Person(s) authorizing the work, including name(s), address(es), and telephone number(s);
- f. Person(s) performing the work, including name(s), address(es), and telephone number(s);

- g. Costs associated with the work activity, including a description of to whom these costs have or will be paid and who has or will pay for the work;
 - h. A list of all machinery or equipment used to perform the work activity;
 - i. Copies of any permits, work orders, receipts, reports, other documents or communications specific to the work activity at the Site between you, the person(s) performing the work activity and the person(s) directing the work activity;
 - j. Copies of all contracts, work assignments, invoices, requests for proposals, or bills for the work;
 - k. An estimate of the total volume of discharged dredged and/or fill material and the total surface area where dredged and/or fill material was placed on the Site;
 - l. Source of the fill material placed at the Site and/or the name(s), address(es), and telephone number(s) of the material source supplier(s);
 - m. Any photographic documentation of the Site prior to the work activity; and
3. Indicate on a map of the Site all locations where any dredged and/or fill material were placed and where any other work activity has taken place. Provide dates for each placement of dredged and/or fill material identified on the map. On the same map delineate, to the extent known, the wetlands and other waters of the United States which were present at the Site before activities.
 4. Have you ever applied for a Clean Water Act Section 404 permit? If so, please provide the dates the permits were requested and whether the permits were issued.
 5. Provide a detailed explanation of your reasons for not obtaining a Clean Water Act Section 404 permit before beginning the dredging and/or filling activities at the Site.
 6. Identify and submit copies of all sketches, plans, and as-built drawings related to work activities at the Site.
 7. Identify and submit copies of any and all documents, including but not limited to, environmental studies, reports, analyses, aerial photographs, or delineations, relating to: the absence, presence, or boundaries of hydric soils, vegetation characteristics that are suggestive of a wetland, or wetland hydrology; or that identify or relate to ponding, lowlands, marshes, wetlands, swamps or fens at or within the Site.
 8. Provide copies of any and all communications, correspondence, authorizations, or permits obtained from any Federal, State, or local government agency, authorizing or pertaining in any way to the discharges of dredged or fill material at the Site.
 9. Identify and submit copies of any and all documents and communications between you, the contractor or any other individual or organization regarding permit requirements from Federal, State or local governments and required authorizations pertaining in any way to the discharge of dredged or fill material at the Site.
 10. Describe the purpose of the land clearing and all current uses of the property.
 11. The EPA would like to visit the property to analyze any work conducted on the Site. Please complete the enclosed Consent for Access to Property form and return with your response to this information request.

ENCLOSURE 2

STATEMENT OF CERTIFICATION

CWA Section 308 Information Request issued to
Sergey Litovchenko

I certify that the foregoing responses and information submitted were prepared under my direction or supervision and that I have personal knowledge of all matters set forth in the responses and the accompanying information. I certify that the responses are true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

By _____
(Signature)

(Title)

(Date)

ENCLOSURE 3

CONSENT FOR ACCESS TO PROPERTY

Name: Sergey Litovchenko, Property Owner

Location: 5905 Barr Road, Ferndale, Washington

I hereby give my consent and permission, to the extent of my authority and interest in the property and premises described above the Property, and any appurtenances thereto, to employees, contractors, and authorized representatives of the U.S. Environmental Protection Agency (EPA) to enter the Property in order to observe and record environmental conditions on the Property. Such actions may include, but are not limited to:

- The taking of such soil, surface water, groundwater, and air samples upon the Property as may be determined to be necessary by EPA; and
- The taking of notes, photographs, and other records of environmental conditions.

This written permission is given by me voluntarily with knowledge of my right to refuse and without threats or promises of any kind.

Date: _____

Signature: _____